

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN BECK
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL 17A-UI-06770-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/28/17
Claimant: Respondent (1)**

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Sam Hours and Wages
Iowa Code § 96.7(2)A(2) – Chargeability of Employer’s Account

STATEMENT OF THE CASE:

Cedar Rapids Community School District (employer) filed a timely appeal from the June 29, 2017, reference 01, unemployment insurance decision that allowed benefits based on the determination Susan Beck (claimant) is partially unemployed and the employer’s account cannot be relieved of charges. After due notice was issued, a telephone conference hearing was held on July 20, 2017. The claimant participated. The employer participated through Human Resource Generalist Aubrey Mcelmeel-Balkman. No exhibits were offered or received.

ISSUE:

Does the claimant have reasonable assurance of continued employment in the next school term or year?
Is the claimant partially unemployed?
Is the claimant employed in the same wages and hours rendering her unavailable for work?
If so, can charges to the employer’s account be waived?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a Sign Language Interpreter for the Cedar Rapids Community School District during the 2016-2017, school year. The claimant works full-time for a nine-month term, most recently at the George Washington High School.

The employer stopped providing written notice to employees of reason assurance in May 2013. Its current practice is to notify employees verbally if there is going to be any change in employment the following year, such as hours, wages, or work location. If an employee does not receive any communication, the employer assumes the employee knows there will be continued employment the following year in the same capacity.

For the 2017-2018 school year, the employer plans to return the claimant to the same position in which she worked for 2016-2017 school year. While the claimant assumed she would have

continued employment, no one from the employer communicated this to the claimant. The claimant has filed for unemployment insurance benefits, but has two part-time jobs. She has been reporting her wages each week that she claims benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does not have reasonable assurance of returning to work the following academic term or year. Additionally, the claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible.

Iowa Code section 96.4(5) provides, in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. **To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.** (Emphasis added.)

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

In this case, the claimant does not have reasonable assurance of continued employment for the 2017-2018 school year. While the regulation allows for a written, verbal or implied agreement, it also requires some form of notification of continued employment the following year to constitute reasonable assurance. Iowa Admin. Code r. 871-24.51(6). The employer did not notify the claimant she would have continued employment the following year. As the claimant does not have reasonable assurance, she is considered laid off or separated from her regular employment until such time as she is recalled to work. The claimant also works part-time at two jobs. She is eligible for unemployment insurance benefits during any week in which she earns less than her weekly benefit amount plus fifteen dollars.

The employer is the claimant's regular employer. It is not currently offering her hours and she was laid off due to a lack of work. The employer's account may not be relieved of charges.

DECISION:

The June 29, 2017, reference 01, unemployment insurance decision is affirmed. The claimant does not have reasonable assurance of returning to work the following academic year or term and is partially unemployed. Benefits are allowed during any week in which the claimant earns less than her weekly benefit amount plus fifteen dollars. The employer's account may not be relieved of charges.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn